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AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re GoTo.com, Inc.¹

Serial No. 75/678,255

Motion to Have Opinion Vacated or Withdrawn

David S. Fleming of Brinks, Hofer, Gilson & Lione for
GoTo.com, Inc.

Amy Ann Long, Trademark Examining Attorney, Law Office 104
(Sidney I. Moskowitz, Managing Attorney).

Before Hairston, Bottorff, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On February 26, 2003, the Board affirmed the examining
attorney's refusal to register applicant's mark on the

¹ Applicant has indicated, and Office assignment records show,
that applicant is now Overture Services, Inc. Reel/Frame No.
2426/0035.

ground that the mark PAY-FOR-PERFORMANCE ADVERTISING is merely descriptive for the identified services. On March 13, 2003, the Office received applicant's Motion to Have Opinion Vacated or Withdrawn.² Applicant seeks to have the opinion vacated because on September 4, 2002, it mailed a notice of express abandonment of the application to the Office. The original notice of abandonment was never associated with the application file. Applicant has included a copy of its notice of express abandonment with a certificate of mailing dated September 4, 2002.³

An applicant may, of course, expressly abandon its application during its appeal. 37 CFR § 2.68; TBMP § 1211. It is apparent that applicant abandoned its application prior to the issuance of the opinion in this case. Therefore, the February 26, 2003, opinion in this case should not have issued.

Decision: Applicant's motion to vacate the February 26, 2003, opinion is GRANTED. The application stands abandoned.

² This paper was only recently associated with the file.

³ The motion also refers to an Exhibit B, a photocopy of the return receipt card. This document was not attached to the motion.